

### **REMARKS**

Claims 1-25 are pending in the present application. With the Office Action of July 3, claims 1-4, 7, 9, 11-16, 18, and 20-25 are rejected under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent Number 4, 247,097 to Schwartz ("Schwartz") in view of U.S. Patent Number 4,632,387 to Guzman ("Guzman") and U.S. Patent Number 4,330,120 to Netti ("Netti"). Applicant traverses the rejections and respectfully requests reconsideration based on the amendments to the application indicated above.

With respect to claims 8, 10, and 17, the Examiner has objected to these claims as being dependent upon a rejected base claim, but indicated they would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 8, 10, and 17 have been amended and are now written in independent form to incorporate allowable subject matter.

By this amendment, applicant has modified the claims to more clearly define the applicant's invention.

Applicant's claimed invention is directed to an exercise device comprising a garment having a first end and a second end. The exercise device further includes a member made of flexible material and disposed between the first end and the second end. The member is adapted to be flexibly positioned around a body part, and a plurality of pockets are uniformly disposed around the member. The pockets are adapted to removably hold weights of varying amounts. The first end has a ventilated area comprising an open area free of material to allow direct exposure of the environment to a handle, to assist in cooling the interior of the member and the body part during use of the device. The second end has a body area which is configured to constrict around a body part when the device is in use. The handle is fastened to the member near the first end to allow the body part to maintain gripping contact between the body part and

the member while the body part performs exercise movements. The handle is further configured to torsionally restrict movement of the body part with respect to the member to enhance a user's exercise routine.

**4. Response to Rejections under 35 U.S.C. § 103(a)**

The Examiner has rejected Claims 1-4, 7, 9, 11-16, 18 and 20-25 as being unpatentable over Schwartz in view of Guzman and Netti. Independent claims 1 and 12 have been amended to recite that the member of the exercise device is made of flexible material. Support for this amendment is found at page 5, paragraph 00017 and pages 7-8, paragraph 00027 of the specification.

The Schwartz glove is made of fabric such as duck or canvas, or leather or synthetic leather such as Naugahyde. These are not flexible materials, as recited in Applicant's claims 1 and 12, as presently amended. The Netti device is made of a porous and pliable material, such as Naugahyde, canvas or open weaved nylon, none of which are flexible materials. The Guzman device is used underwater and is made of a slightly buoyant, non-corrosive and durable material. No flexible material fits these criteria. Therefore, none of the three applied references teach the use of an exercise device having a member of flexible material.

Further, Schwartz does not disclose a handle near a first open end of the garment. In fact, the first end of the Schwartz glove is completely closed, making it difficult for a user to grasp a handle, even if a handle were disposed in the closed end of the Schwartz glove. The Guzman handle is exposed to the user in a lateral opening, while one end of the device is closed. The Guzman handle is readily gripped by the user's hand due to this open configuration. However, if the handle of Guzman were inserted into the glove of Schwartz, the user could not see the handle, and would have difficulty gripping the handle. Additionally, the Schwartz disclosure

does not teach that the fingers would be folded in use of the device so as to grip a handle even if one were present. Therefore, there is nothing in the Schwartz reference that teaches that the handle of Guzman could be inserted into an open ended exercise device, as specifically recited in Applicant's claim 1.

Likewise, the Netti device does not teach the use of a handle in an exercise device. Further, the member 37 of Netti is a strap, and is not a flexible member as claimed by Applicant. Additionally, the member 37 of Netti, when fastened, does not uniformly dispose either the member 37 or the forearm section 14 around the body part as does the flexible material of Applicant's claimed invention. See Applicant's specification, paragraph 00027, page 8, lines 1-2.

The Examiner has failed to set forth the level of ordinary skill in the art and has failed to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (U.S. 2007). There is nothing disclosed in either Schwartz, Guzman, or Netti that would teach or suggest to one skilled in the art the modification suggested by the Examiner. The fact that neither of Schwartz, Guzman, or Netti provides any such capabilities suggests that the advantages of combining these references would not be intuitive or predictable to one of ordinary skill in the art. Accordingly, claim 1 in amended form is believed to be allowable over the combination of Schwartz, Guzman, and Netti. Additionally, claims 3-4, 7, 9, 11, 24, and 25 depend from claim 1 directly or indirectly, and are allowable for the reasons set forth above in support of the allowance of independent claim 1 as amended.

Further, claim 12 in amended form is submitted as allowable over the combination of Schwartz, Guzman, and Netti for the reasons set forth above supporting the allowability of claim

1. Additionally, claims 13-16 depend from claim 12 and are allowable for the reasons set forth above in support of the allowance of independent claim 12 as amended. No new matter has been added.

Claim 18 has been amended to include that the handle torsionally resists movement with respect to the member. The Examiner has stated that this torsional resistance as recited in claim 10, is allowable over the applied references. Therefore, claim 18, as presently amended, is submitted as allowable for the same reasons supporting the allowability of claim 10. Therefore, Applicant respectfully requests that the obviousness rejection of claim 18 be removed. Additionally, claim 21 depends from claim 18 and is allowable for the reasons set forth above in support of the allowance of independent claim 18 as amended. Claim 23 has been cancelled.

### **Conclusion**

For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and allowance of claims 1, 3-4, 7, 9, 11, 16, 18, 21, and 24-25. This paper is timely filed. The Commissioner is authorized to charge any deficiencies to deposit account 190011 of Reed Smith Sachnoff & Weaver.

If there are any matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call Applicants' attorney at the number listed below.

Respectfully submitted,

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